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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/822,520	04/12/2004	Todd Bolzer	33511-CNT1	3332

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Suite 400
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EXAMINER

CASTELLANO, STEPHEN J

ART UNIT	PAPER NUMBER
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3781

MAIL DATE	DELIVERY MODE
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07/16/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/822,520

Applicant(s)

BOLZER, TODD

Examiner

/Stephen J. Castellano/

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 June 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-44 and 48 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-44 and 48 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Claims 1-44 and 48 are pending. Claims 45-47 have been canceled.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The plain, ordinary meaning of the term *circumscribe* – *to surround by or as if by a boundary*. The trough of this invention doesn't extend completely around the collar and is not continuous and doesn't surround the collar as is shown in Fig. 5, the trough opens adjacent to the pockets so that liquid drains downwardly into the pocket. The term "circumscribe" will have a meaning in claims 40-48 which is consistent with the plain, ordinary meaning.

Claims 1-39 and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fouss et al. (4359167) (Fouss) in view of Gaubatz et al. (5804946) (Gaubatz) and Gerhard.

Fouss discloses an underground tank comprising a resin shell having an outer wall defining a chamber for storing liquid, as shown in Fig. 1 the shell is elongated along a longitudinal axis, an upper wall includes a manway 92, 94, 96, an outer wall includes inwardly extending pockets formed by root portions 12 of the corrugated side wall, the outer wall also includes inwardly extending pockets (indentation areas 54, 56) formed in the end walls, the indentation areas have an upright wall (vertical sloping back wall 64) extending inwardly from the upper wall at least about 25 % the height of the shell (which is at least about 15%) and a second wall (lower wall 62) substantially perpendicular to the upright wall and extending inwardly from the sidewall a distance. Fouss discloses the invention except for the pocket being on the sidewall, the inward extending distance being at least about 15 % of the width and the

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opening being large enough for a man. Gaubatz teaches a sidewall with two inwardly extending pockets, the pockets include planar back or upright walls and planar lower or second walls, the walls extend inwardly from the sidewall at least about 30-40% of the width of the shell at the point where the pockets are located, at least about 30-40 % includes at least about 15 %. It would have been obvious to move the pockets 54, 56 of Fouss to the sidewalls as a matter of design choice in forming the ingress and egress of fluid through the sidewall rather than through an end wall, the arrangement of the pockets would still be opposed to each other. It would have been obvious to increase the inward extent of the lower or second wall to accommodate piping or external equipment of larger size, even a size as large as 40 % of the width and certainly a size to include at least about 15 % of the width.

Gerhard teaches a manhole 16 (16 designates a cover that closes a manhole in Fig. 1), the manhole is surrounded by a trough 19. It would have been obvious to modify the size of the Fouss' opening to accommodate a man to allow a man access to the tank interior to perform manual operations of manufacturing, assembling, cleaning, repairing, disassembly, etc.

If it is deemed that the upright wall of Fouss' pocket is not substantially perpendicular to the lower wall, then the teaching of entirely planar upright and second walls of Gaubatz can be applied, these two walls are entirely perpendicular to each other. It would have been obvious as a matter of design choice to modify the walls to be entirely planar and entirely perpendicular to provide right corners and right angles to allow easier measuring and designing based upon rectilinear grids or cubes and the lower wall being made to sit level or horizontal provides a platform to determine whether the tank is installed level to the horizon.

Re claims 3 and 4, it would have been obvious to provide additional sets of pockets longitudinally spaced and extending from the upper wall or lower wall of the tank to provide accommodation for additional piping or equipment as may be necessary to enhance the tanks utility.

Re claims 1-5, the upright wall perpendicular to the second or lower wall may be a pocket sidewall (sidewalls 58, 60 of Fouss).

Re claim 6, it would have been obvious to align pockets longitudinally, transversely as well as vertically and to evenly space pockets to form the pockets in an orderly and predictable manner to reduced the guessing or calculation needed to install the storage tank in a system.

Re claim 10, flat end walls are well known. It would have been obvious to modify the end wall to be flat so that the end wall can be formed from a single flat plate or sheet eliminating the shaping of a domed end wall.

Re claim 48, the opening of Fouss includes an outer annular collar 92, an inner annular flange 94 and an inner collar formed by a riser disposed on flange 94 (see col. 4, lines 63-64) the riser or inner collar is adapted to receive a cover. Therefore, a trough formed by an inner wall of the riser, a bottom wall of flange 94 and an outer wall of collar 92 circumscribes the inner collar or riser.

Claims 40-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fouss et al. (4359167) (Fouss) in view of Gerhard.

Fouss discloses an underground tank comprising a resin shell having an outer wall defining a chamber for storing liquid, as shown in Fig. 1 the shell is elongated along a longitudinal axis, an upper wall includes an opening 96, an outer wall includes inwardly

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extending pockets formed by root portions 12 of the corrugated side wall, the root portion along the side as shown in Fig. 1 has upright walls extending over 50% of the height, the same root portion at the upper wall as shown in Fig. 2 has a vertical, second wall substantially perpendicular to the upright wall and extending at least 40% of the width, the opening includes an outer annular collar 92, an inner annular flange 94 and an inner collar formed by a riser disposed on flange 94 (see col. 4, lines 63-64) the riser or inner collar is adapted to receive a cover. Therefore, a trough formed by an inner wall of the riser, a bottom wall of flange 94 and an outer wall of collar 92 circumscribes the inner collar or riser. Fouss discloses the invention except for the opening being large enough for a man. Gerhard teaches a manhole 16 (16 designates a cover that closes a manhole in Fig. 1), the manhole is surrounded by a trough 19. It would have been obvious to modify the size of the Fouss' opening to accommodate a man to allow a man access to the tank interior to perform manual operations of manufacturing, assembling, cleaning, repairing, disassembly, etc.

Applicant's arguments with respect to claims 1-44 and 48 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is 571-272-4535. The examiner can normally be reached on increased flexibility plan (IFP).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony D. Stashick can be reached on 571-272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Stephen J. Castellano/
Primary Examiner
Art Unit 3781

sjc